

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 1177 of 2007
With
CIVIL APPLICATION No. 3288 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE M.S.SHAH**

and

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge
?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
MANILAL LALLUBHAI PATEL & 2 - Defendant(s)

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Appearance :

MR AJAY R MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1, 1.2.1,1.2.2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/03/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal at the instance of the Insurance Company is directed against the judgment and award dated 4.11.2006 passed by the Motor Accident Claims Tribunal (Aux.), Valsad in MAC Petition No.2184 of 2002 awarding compensation of Rs.8,55,000/- (including Rs.5 lakhs for medical treatment) to the parents of one Ripal aged 19 years who lost his life in an accident between two motor-cycles.

2. On 10.9.2001 at about 12.30 in the afternoon, the deceased was riding a motor-cycle in the city of Valsad. A Suzuki motor-cycle insured by the appellant-Insurance Company came from the opposite direction. In the collision between the two vehicles, the deceased sustained head injuries. The deceased was rushed to the Hospital and admitted as an indoor patient at Mahavir Hospital, Valsad from 10.9.2000 to 13.10.2000 during which period, the deceased underwent intensive treatment including brain surgery. The deceased was thereafter taken to Harkishandas Hospital, Mumbai where he was admitted for two months from 14.10.2001 to 21.12.2001. On 21.12.2001, the deceased was brought back to Valsad and he succumbed to the injuries on 7.6.2003.

3. Initially, the claim petition was filed by the deceased himself on 17.8.2002, but on account of the unfortunate death of the original claimant who was the only son of his parents, the parents (father aged 58 and mother aged 55 years) were brought on record as the claimants, who claimed compensation of Rs.11 lakhs.

At the trial, the pillion-rider accompanying the deceased on his CBZ motor-cycle deposed on oath that the offending vehicle (Suzuki motorcycle) was coming from the opposite direction and after overtaking a truck dashed into the CBZ motor-cycle being driven by the deceased. The Suzuki motor-cycle driver who was opponent No.1 did not step into the witness box nor was he examined as a witness by any of the opponents. Relying on the oral evidence of the pillion-rider Mitul Parekh accompanying the deceased, and the panchnama of the scene of offence, the Tribunal came to the conclusion that the accident was caused by the sole negligence of the Suzuki motor-cycle driver.

On the question of quantum of compensation, the Tribunal awarded the compensation under the following heads :-

Rs.5,00,000/-	For medical treatment and expenses;
Rs. 75,000/-	For pain, shock and suffering undergone by the deceased from the date of the accident (10.9.2000) till the date of death (7.6.2003)
Rs. 30,000/-	For attendant charges
Rs. 15,000/-	For special diet
Rs. 10,000/-	For transportation charges and funeral expenses
Rs.2,25,000/-	For loss of dependency benefit.

Rs.8,55,000/-	Total

The Tribunal also awarded interest at the rate of 7.5% per annum on the compensation amount.

4. Mr Ajay R Mehta with Mr Sunil Parikh for the appellant- Insurance Company has vehemently assailed the judgment and award of the Tribunal mainly on the following grounds :-

- (i) The Tribunal erred in holding the Suzuki motor-cycle driver to be entirely responsible for the accident in question and in not attributing any contributory negligence to the deceased, who was himself driving the other motor-cycle.

(ii) The Tribunal, after assessing the actual and prospective income of the deceased at Rs.1250/- per month, erred in not deducting any amount towards the personal expenses of the deceased had he remained alive.

(iii) The claimants are aged 58 and 55 years and still the Tribunal adopted the multiplier of 15 years.

5. On the question of negligence, the only eye-witness was Mitul Parekh who was the pillion-rider on the motor-cycle being driven by the deceased. In his deposition at Exh.55, the witness stated that he was a friend of the deceased and the deceased was driving the motor-cycle on the correct side of the road and at a moderate speed. The Suzuki motor-cycle in question was coming from the opposite direction after overtaking a truck. The deceased tried to swerve his motor-cycle to the left, but the Suzuki motor-cycle came from the opposite direction with great force and knocked down the motor-cycle on which the deceased and the witness were travelling. The deceased received serious head injuries and was bleeding from the ears. Therefore, he was immediately taken to a Hospital. On behalf of the Insurance Company, an attempt was made to bring out some omissions on the ground that in the complaint i.e. the FIR, it was not stated that the Suzuki motor-cyclist was overtaking the truck. However, that by

itself would not shake the probative value of the testimony of the eye-witness whose presence at the place of the accident was never doubted. Moreover, the complaint before the police was not lodged by this pillion-rider eye-witness because he had accompanied the deceased to the Hospital. We do not find anything in the cross-examination of this witness to shake his evidence. Besides the very fact that the Suzuki motor-cyclist who knocked down the deceased did not step in the witness box is sufficient to draw an adverse inference against the said tort-feasor. The Tribunal which had the advantage of observing the demeanor of the eye-witness and which has also gone through the oral and documentary evidence on record including the panchnama, therefore, rightly came to the conclusion that the accident was caused by the sole negligence of the Suzuki motor-cyclist.

6. Coming to the question of quantum of compensation, all that has been awarded to the parents for the death of their 19 year old son by way of compensation for loss of dependency benefit is Rs.2,25,000/-. As already indicated hereinabove, the major portion of the compensation is for medical treatment for which the parents had produced the necessary documentary evidence including the case papers of treatment at the Hospitals in Valsad and the Harkishandas Hospital in Mumbai. Merely because the Tribunal has assessed the prospective income of the deceased at Rs.1250/- per month i.e. Rs.15,000/-

per annum and thereafter adopted the multiplier of 15 years is no ground to reduce the compensation for loss of dependency benefit because the deceased had passed his 12th Standard examination in Science stream at the first attempt in April 2001 as per the mark-sheet produced on record. The deceased was a 19 year old boy in the first year of college and was the only son of the parents. Within a few years, the deceased would have completed his studies and would have started earning and started supporting the parents who were already aged 58 and 55 years on the date of the accident. The Tribunal could, therefore, as well have assessed the prospective income of the deceased at Rs.5,000/- per month and even after deducting 50% thereof towards his personal expenses, the dependency benefit for the parents could have easily been assessed at Rs.2500/- per month i.e. Rs.30,000/- per annum. Considering the age of the mother (55 years on the date of the accident), the multiplier of 8 could be adopted and on this basis, the compensation for loss of dependency benefit would work out to $\text{Rs.30,000} \times 8 = \text{Rs.2,40,000/-}$. In this view of the matter, the amount of Rs.2,25,000/- awarded by the Tribunal for loss of dependency benefit can never be said to be on the higher side. We also find that the Tribunal has awarded interest at the rate of only 7.5% per annum.

7. In the totality of the facts and circumstances of the case, therefore, we do not find that any case is made out for interfering with the

award under challenge.

8. The appeal is summarily dismissed.

The amount deposited before this Court at the time of filing the appeal shall be transmitted to the Tribunal within one month from today.

9. Since the appeal is dismissed, the civil application for stay is also dismissed.

(M.S. SHAH, J.)

(AKIL KURESHI, J.)

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